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Before the
Federal Communications Commission
Washington, D.C. 20554

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In re Applications of)	MM Docket No. 93-241
)	
DARRELL BRYAN)	File No. BPH-920109MA
)	
SBH PROPERTIES, INC.)	File No. BPH-920123MD
)	
)	

For Construction Permit for
New FM Channel 276A
Tusculum, Tennessee

To: Honorable John M. Frysiak
Administrative Law Judge

PETITION TO ENLARGE ISSUES
AND
THRESHOLD SHOWING OF UNUSUALLY POOR BROADCAST RECORD

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September 30, 1993

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SUMMARY

As established herein, during Darrell Bryan's ownership and operation of WSMG(AM), Greeneville, Tennessee, the station has engaged in a course of operation in which the station's carrier has been left on, unmodulated, uncontrolled and unattended for periods of 4-6 hours on a daily basis for an undetermined, although significant, period of time and in which the station has operated in excess of its authorized power, with full knowledge of its owner. This course of operation violated Sections 73.932, 73.933, 73.1201, 73.1560, 73.1745, 73.1820, 73.1860 of the Commission's Rules. Appropriate issues are requested.

As further established herein, during Bryan's ownership and operation of WSMG, the station has failed to prepare and place in its local public inspection file the required quarterly issues/programs lists for any quarter during the periods from October, 1986 through December, 1990; July through December, 1991 and July through December, 1992, in violation of Sections 73.3526(a)(9) and 73.3526(e) of the Commission's Rules. Furthermore, those lists which have been placed in the public file are deficient and fail to reflect any significant treatment of issues of concern to the community. Appropriate issues are requested.

As further established herein, admissions against have been made by one Frank Harkins that he was "going to have to help" "Kathy [Knight] and Darrell" and that, while he did not anticipate that he, personally, would be involved "in the operation of the station," but admitted that he would in fact be involved, "but kind of like" Kent Bewley and Paul Hite are involved in SBH Properties, Inc., where they, as nonvoting shareholders, hold 66.66% of the equity. Appropriate issues are requested.

In addition to seeking basic qualifying issues, based upon the foregoing, SBH contends that the evidence presented constitutes a threshold showing of an unusually poor broadcast record on the part of Darrell Bryan and seeks to have that considered under the standard comparative issues.

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SBH Properties, Inc. ("SBH") by counsel, pursuant to Section 1.229(b)(1) of the Commission's Rules and the Policy Statement on Comparative Broadcast Hearings, 1 FCC2d 393 (1965), herewith (a) submits its Threshold Showing in support of its request that the standard comparative issue be enlarged in order to permit the adduction of evidence as to the unusually poor past broadcast record of Darrell Bryan ("Bryan"), as reflected in his operation of WSMG(AM), Tusculum, Tennessee, and (b) further petitions for enlargement of the issues in the above proceeding to include the following issues:

1. To determine whether Bryan has violated the Commission's Rules in his operation of WSMG(AM) by permitting the station's carrier to remain on, unmodulated, unmonitored, and unattended, following sign-off.

2. To determine whether Bryan has violated the Commission's Rules in his operation of WSMG(AM) by permitting the station to operate at power levels in excess of its authorized power.

3. To determine whether Bryan has violated the Commission's Rules in his operation of WSMG(AM) by failing to properly prepare and maintain in the station's local public inspection file the required quarterly issues/programs lists.

4. To determine whether either Kathy Knight or Frank Harkins is an undisclosed principal or a real party in interest with respect to Bryan's application.

5. To determine whether Bryan has misrepresented the true nature of the ownership and control of his application and the intended ownership and control of the proposed station.

6. To determine in light of the evidence adduced under the foregoing issues the effect on Bryan's basic qualifications.

In support whereof the following is shown:

BACKGROUND

1. In his Integration & Diversification Statement, filed September 13, 1993, Bryan represented (at page 2) that he is an individual applicant and that "no one other than Mr. Bryan has any interest in or connection with this application." He further represented that he "intends to operate the proposed Tusculum, Tennessee, facility as a sole proprietor." Bryan also represented in his above referenced application (at II., Item 1) that he is an "individual" applicant and (at II, Item 4) that there exists no agreements regarding future ownership interests. Bryan also represented in his Integration & Diversification Statement (at page 3) that he "owns 100% of the common voting stock of Burley

Broacasters, inc., licensee of Radio Station WSMG-AM, Greeneville, Tennessee," and also confirmed (at page 8) that he has been that station's General Manager since 1981 and has been its sole owner since March 2, 1989.

2. As reflected in the attached Declaration of William H. Seaver (Exhibit A), as a result of his having received information that WSMG(AM), Greeneville, Tennessee, had been engaging in a continuing practice of leaving its unmodulated and unattended carrier on all night, following sign-off, he undertook to monitor the station on Saturday, May 8, 9 and 10, 1993 at both sign-off and sign-on and confirmed that the station was in fact leaving its carrier on after sign-off. Furthermore, he observed that following sign-off at Midnight on May 8, 1993, the operator turned off the lights and left the premises at approximately 12:15 AM and observed, thereafter, that both the studio and transmitter sites were unattended. Mr. Seaver again monitored WSMG from prior to sign-off on Saturday, June 26, 1993, until after sign-on on Sunday, June 27, 1993. Throughout this time the station's carrier remained on an unmodulated. Furthermore, Mr. Seaver confirms that the operator on duty left the premises at approximately 12:15 AM and the station remained unattended until the morning operator arrived at approximately 5:25 AM on June 27, 1993. In addition Mr. Seaver observed that the station was signed-off the air with an incomplete station identification announcement and that no "legal ID" was broadcast until subsequent to the broadcast of two programs, following sign-on at

6:00 AM the following morning. Again on Sunday, June 27, 1993, Mr. Seaver monitored WSMG(AM) prior to sign-off until after 1:15 AM on June 28, 1993, again observing that the carrier remained on, unmodulated and unattended, after sign-off and the departure of the operator on duty. Mr. Seaver returned to WSMG's transmitter site at 4:15 AM on Monday, June 28, 1993, and observed that the carrier remained on and unmodulated until sign-on at 4:30 AM.

3. As reflected in the attached Declaration of Robert C. Seaver (Exhibit B), he monitored WSMG(AM) prior to sign-off on Saturday, May 15, 1993, in the presence of four other people and observed that the station's carrier remained on and unmodulated, following sign-off at midnight until he ceased monitoring the station at approximately 1:30 AM on May 16, 1993.

4. As reflected in the attached Declaration of David Burns (Exhibit C), he monitored WSMG(AM) from prior to sign-off until between 12:30 AM and 1:15 AM on May 31, 1993, June 1, 1993, June 2, 1993, and June 12, 1993, and observed in each instance that, following sign-off at midnight, the station's carrier remained on and unmodulated as long as he continued monitoring the station.

5. As reflected in the attached Declaration of David T. Murray (Exhibit D), he monitored WSMG from prior to sign-off on June 29, 1993 until 1:31 AM on June 30, 1993, and made periodic field strength measurements throughout this period. Mr. Murray measured a field of 330 mv during regular programming between 11:00 and sign-off at midnight. Following sign-off, he reports,

the carrier did not drop, but remained on, unmodulated, uncontrolled and unattended. He continued to monitor the station's carrier until 1:31 AM, observing no change in the carrier throughout this time.

6. As reflected in the attached Declaration of David T. Murray (Exhibit E), he visited WSMG's studios on July 8, 1993 and reviewed the station's local public inspection file. In so doing Murray observed that none of the required quarterly issues/programs lists had been placed in the file for the following periods: October, 1986 through December, 1990; July, 1991 through December, 1991 and July, 1992 through December, 1992. Murray requested that the person who had provided the public file supply the issues/programs lists for the foregoing periods, but she indicated she could not. Murray then requested and received copies of the stations issues/programs lists for 1993 to date, copies of which are attached to his Declaration, as Attachment 1. Murray further affirms that he also reviewed the issues/programs lists for the periods of January through June, 1991 and for January through June, 1992 and observed that these files contained the same type of "Public Affairs File" forms as had been prepared for 1993 and that they also contained very similar entries, "most of which reflected the broadcast of PSA's rather than actual programs." Accordingly, Murray's Declaration establishes that the issues/programs lists for the first two quarters of 1993, which are appended to his Declaration, are fully representative of all the issues/programs lists contained

in WSMG's public file.

7. As further reflected in the attached Declaration of David T. Murray (Exhibit E), he requested and received copies of WSMG's Transmitter Logs for each day during the week of June 28 through July 4, 1993, copies of which are attached to his Declaration as Attachment No. 2. As Murray's Declaration affirms, these logs confirm on their face that WSMG operated in excess of its authorized power of 7.29 amps (1,000 watts) "for the entire broadcast week" and that the station exceeded its authorized power by more than 105% all day on June 28, 29, 30 and July 4, 1993, while exceeding its authorized power by more than 105% "for portions of each of the remaining days in the sample week, yet did not terminate transmission, as required by 73.1560(a)(2)."

8. As further reflected in the attached Declaration of J. Kent Bewley (Exhibit F), he was approached by Kathy Knight, an employee of WSMG, as well as her father, Frank Harkins, on behalf of Bryan in an effort to dissuade Mr. Bewley from continuing to participate as a nonvoting shareholder of SBH. In this context Ms. Knight demonstrated a persistent effort to approach and converse with Mr. Bewley regarding the competing applications of Bryan and SBH, reflecting an unusual degree of interest in the matter. This unusual level of interest was understandable, however, following Mr. Harkin's conversation with Mr. Bewley. In this regard, as Mr. Bewley reports, after telling Mr. Harkins that he and Paul Hite were simply investors in SBH's application, he asked Harkins the reason for his personal interest in the

matter. Mr. Harkin responded: "Well, I'm going to have to help them." Mr. Bewley asked who "they" referred to and was told: "Kathy and Darrell." He then asked if Mr. Harkins was "going to be involved" and was told: "Not in the operation of the station, but kind of like you and Paul." Subsequent to his conversation with Mr. Harkins, Mr. Bewley was also approached by Bryan, himself, in an effort to dissuade Mr. Bewley from continuing to participate as a nonvoting shareholder of SBH. Following that conversation, he was again approached by Kathy Knight on several occasions regarding the same subject.

DISCUSSION

9. As reflected above, after having been advised that WSMG was engaging in a continuing practice of leaving its carrier on, unmodulated, uncontrolled and unattended, following sign-off each night, SBH undertook efforts to have the station monitored by various individuals to confirm and document this practice. Those efforts confirm what SBH's William Seaver had been told and establish a documented course conduct on the part of the station, which served to place the station in violation of numerous Commission Rules. Indeed, what SBH has been able to document represents on the "tip or the iceberg," as it were. Given his role as the sole owner and General Manager of WSMG, the responsibility for this on-going course of conduct and the resulting Rule violations lie squarely at the feet of Bryan.

10. Pursuant to Section 73.1201 of the Commission's Rules, stations are required to broadcast hourly station identification announcements. WSMG's failure to do so, during those time periods when its carrier remained on, but unmodulated, resulted in repeated (hourly) violations of the Commission's Rules. Likewise, Section 73.1860 requires stations to have at least one person holding a commercial radio operator license or permit to be "on duty in charge of the transmitter," "able to observe the required transmitter and monitor metering to determine deviations from normal indications" and "to be able to make the necessary adjustments." As demonstrated above, during the times which it left its live carrier on, unmodulated and unattended, WSMG was in violation of each requirement of this Rule. Furthermore, Section 73.1820 imposes certain monitoring and logging requirements on all AM station. WSMG violated this Section of the Rules, during all of the periods in question, based on its failure to monitor and log transmitter operating parameters between midnight and 4:30-6:00 AM, four to six continuous hours during each 24 hour period.

11. Even more significant are WSMG's violations of and inability to comply with relevant Emergency Broadcast System ("EBS") requirements and procedures. Pursuant to Section 73.932 of the Commission's Rules, all stations are required to install and operate, during all hours of operation, equipment capable of receiving the EBS Attention Signal and emergency programming. This equipment must be installed and operated so as to enable

"the broadcast station staff, at normal duty locations, to be alerted instantaneously upon the receipt of the attention signal and to immediately monitor emergency programming." During the each of the periods in which WSMG has operated with its carrier unmodulated and unattended is has violated this Rule, inasmuch as it was not operating in a manner which permitted station staff to be alerted instantaneously or undertake required monitoring in the event of an activation of the EBS. Futhermore, Section 73.933 requires all licensees to take certain action "immediately" upon receipt of Emergency Action Notification including: monitoring radio networks for further instructions, checking with wire services, verifying the authenticity of the message with the current EBS Authenticator List, monitoring its monitoring assignment, discontinuing normal programing and following the appropriate transmission procedures, i.e., participating stations relay emergency programing, and "non-participating stations are required to remove their carriers from the air and monitor for the Emergency Action Termination." Therefore, regardless of whether WSMG is a participating or nonparticipating station, it was not in a position to either relay emergency programming or to remove its carrier from the air or otherwise follow required procedures in the event of an EBS activation. The Commission takes violations of its EBS rules very seriously, inasmuch as stations, such as WSMG, who fail to comply with required procedures for monitoring, notification and transmission seriously undermine the operational integrity of the EBS system.

Accordingly, the above requested issue should be added.

12. As demonstrated above, not only has WSMG transmitted a live, unmodulated, uncontrolled and unattended carrier on a regular basis, but it also appears that it has engaged in a continuing practice of operating in excess of its authorized power and in violation of Commission Rules. Section 73.1745 provides that "no broadcast station shall operate...with modes of power other than those specified and made a part of the license" and that "any unauthorized departure" will be considered "a violation of a material term of the license." As reflected above, in the attached Declaration of David T. Murray (Exhibit E) and Attachment No. 2, thereto, based on WSMG's own transmitter logs, it operated in excess of its authorized power each day between June 28 and July 4, 1993 and exceeded its authorized power by more than 105% all day on June 28, 29, 30 and July 4, 1993, while exceeding its authorized power by more than 105% for portions of each of the remaining days in the sample week, in clear violation of Section 73.1560 of the Rules. Yet, it did not terminate transmission, as required by 73.1560(a)(2). Furthermore, Bryan cannot claim ignorance of these violations, inasmuch as his signature appears on the logs for June 28, 29, 30 and July 2, 1993. Accordingly, the above requested issue should be added.

13. As reflected above and in the attached Declaration of David T. Murray (Exhibit E) and Attachment No. 1, thereto, WSMG has failed to comply with Section 73.3526(a)(9) of the Rules by

failing to prepare and place in its local public inspection file the required quarterly issues/programs lists for any quarter during the periods from October, 1986 through December, 1990; July through December, 1991 and July through December, 1992. ¹/ Furthermore, the issues/programs lists which it has included are not in the proper form, as specified by the Rule and fail to reflect the airing of any significant issue-related programming. Section 73.3526(a)(9) requires the preparation of a quarterly list of programs that includes "a brief narrative describing what issues were given significant treatment and the programming that provided this treatment," including "but is not limited to, the time, date, duration and title of each program in which the issue was treated." However, WSMG has failed to prepare a quarterly list or the required narrative required for any quarter and, instead, simply included in its public file a separate, filled-in "Public Affairs File" form for each program identified. Accordingly, given WSMG's failure to prepare and maintain anything in its public file in response to Section 73.3526(a)(9) for the periods from October, 1986 through December, 1990, July through December, 1991 and July through December, 1992, and given the deficient, non-complying nature of the lists it has included (for January through June, 1991, January through June, 1992, and January through June, 1993), the above requested issue is warranted and should be added.

1. Section 73.3526(e) provides that "the significant treatment of community issues list" are required to be retained "for the term of license, 7 years."

14. It is well established that the test for whether a third party is a real party in interest is "whether that person has an ownership interest or will be in a position to control, actually or potentially, the operation of the station." KOWL, Inc., 49 FCC2d 962, 964 (RB 1974); accord. Perry Television, Inc., FCC Rcd. 1667 (RB 1990); San Joaquin Television Improvement Corporation, 2 FCC Rcd. 7004, 7008 (1987); High Sierra Broadcasting, Inc., 96 FCC2d 423, 435 (RB 1983). Even where familial relationships are involved, the Commission will examine such relationships where the independence of the family members is seriously called into question. Rayne Broadcasting Company, Inc., 5 FCC Rcd. 3350 (RB 1990); Arnold L. Chase, 5 FCC Rcd. 1642 (1990); Richard Bott, 4 FCC Rcd. 4924, 4929 (RB 1989), rev. den. 5 FCC Rcd. 2508 (1990). Arnold L. Chase, 5 FCC Rcd. 1642 (1990).

15. Based upon the foregoing evidence of their involvement, and especially in light of the admissions against interest of Frank Harkin, indicating that he was going to have to "help" "Kathy and Darrell" and that, while he would not be involved in the operations of the station, he anticipated being involved in a capacity "like" Mr. Bewly and Mr. Hite (nonvoting shareholders who together hold 66% equity), a prima facie showing has been made that Frank Harkins and/or Kathy Knight have undisclosed ownership interests in or are real parties in interest in the application of Bryan. At minimum, the evidence compels the conclusion that they must be viewed as being "in a position to

control, actually or potentially, the operation of" the proposed station and/or that Bryan will not be the sole and exclusive owner, as has been represented. It must also be emphasized that there is little question that the evidence submitted in support of this Petition represents nothing more than the 'tip of the iceberg,' as it were. Yet, even on the basis of the evidence presented herein, it is readily apparent that Frank Harkins and/or Kathy Knight are playing or are intended to play some significant, though undisclosed, role with respect to Bryan's application and the proposed station, warranting further inquiry. While their activities and admissions to date may not necessarily be dispositive of whether Bryan's application is or his proposed station will likely be secretly managed by one or the other or both of them, their activities, involvement and representations to date are sufficient to establish a prima facie case, ²/ warranting the addition of the requested issues, as well as being relevant to the resolution of those issues, once added, in accordance with the "totality" of the record evidence. See Renee Marie Kramer, 5 FCC Rcd. 563 (RB 1990). Therefore, the requested undisclosed principal/real party in interest issue should be added. Furthermore, given the foregoing, Bryan's representation

2. Citizens for Jazz on WRVR v. FCC, 775 F. 2d. 392, 397 (D.C. 1985)(Under Section 309 of the Act "prima facie sufficiency" means the degree of evidence necessary to make, not a fully persuasive case, but rather what a reasonable factfinder might view as a persuasive case -- the quantum, in other words, that would induce a trial judge to let a case go to the jury even though he himself would (if nothing else were known) find against the plaintiff").

in the application that he is the sole owner, possessing exclusive control of its affairs, appears to be lacking in credibility. N.E.O. Broadcasting Co., 103 FCC2d 1031, 1035 (RB 1986) Thus, the evidence presented also warrants the addition of the requested misrepresentation issue. Bellingham TV Associates, Ltd., 103 FCC2d 222, 224 (RB 1986).

THRESHOLD SHOWING

16. Paragraphs 1 through 7, supra., and the supporting Declarations upon which they are based, which are incorporated herein by reference, establish a threshold showing that, during Bryan's ownership and operation of WSMG, the station has engaged in a course of operation in which the station's carrier has been left on, unmodulated, uncontrolled and unattended for periods of 4-6 hours on a daily basis for an undetermined, although significant, period of time and in which the station has operated in excess of its authorized power, with full knowledge of its owner, who personally made entries on many of the transmitter logs, which reflect utilization the excessive power. As further reflected at paragraphs 9-12, supra., this course of operation violated Sections 73.932, 73.933, 73.1201, 73.1560, 73.1745, 73.1820, 73.1860 of the Commission's Rules.

17. Paragraph 6, supra., and the supporting Declaration of David T. Murray and attachments thereto, which are incorporated herein by reference, establish a threshold showing that, during Bryan's ownership and operation of WSMG, the station has failed

to to prepare and place in its local public inspection file the required quarterly issues/programs lists for any quarter during the periods from October, 1986 through December, 1990; July through December, 1991 and July through December, 1992. This dereliction of licensee responsibility violates Section 73.3526(a)(9) and 73.3526(e) of the Commission's Rules.

18. The Commission's Policy Statement on Comparative Broadcast Hearings, 1 FCC2d 393, 398 (1965) ("Policy Statement") indicates that it is interested in and will give comparative consideration with respect to the broadcast record of an applicant which, because "either unusually good or unusually poor, give some indication of unusual performance in the future". The Commission will find a broadcast record to be unusually poor where it is shown (a) either a failure to meet the public's needs and interests, or (b) a significant failure to carry out representations made to the Commission. Id. at 398.

19. A station's violation of Commission Rules represents "a significant failure to carry out representations made to the Commission," indeed, one of the most, if not the most significant that can be imagined. Furthermore, inasmuch as the Commission's Rules, governing the operation of radio stations, are adopted precisely to assure that the "public interest, convenience and necessity" are served, a licensee's failure to comply with the Commission's Rules is tantamount to a "failure to meet the public's needs and interests."

20. Section 73.3526(a)(9) of the Commission's Rules requires that licensees of commercial radio station prepare and place in their public inspection files at the end of each quarter "a list of programs that have provided the station's most significant treatment of community issues during the preceeding three month period." These lists are to include "a brief narrative describing what issues were given significant treatment and the programming that provided this treatment," which "should include, but is not limited to, the time, date, duration and title of each program in which the issue was treated." See: Section 73.3526(a)(9). In addition, Section 73.3526(e) provides that "the significant treatment of community issues list" are required to be retained "for the term of license, 7 years." Since the deregulation of radio in 1981, program logs are no longer required to be maintained, and in any event are not publicly available.

Deregulation of Radio, 84 FCC2d 968 (1981), recon. granted in part, 87 FCC2d 797 (1981). Thus, the only remaining evidence by which a licensee's performance, or lack thereof, may be measured is the station's quarterly issues/programs lists. Accordingly, the "preparation and maintenance of "issues/programs" lists for inclusion in the station's public inspection file remains a minimal requirement for operation in the public interest." Safe Broadcasting Corporation, 5 FCC Rcd. 4917, 4918 (RB 1990)

21. Initially, it has been established that during Bryan's operation of WSMG, the station has failed to place any quarterly lists in its public file for the periods from October, 1986

through December, 1990; July through December, 1991 and July through December, 1992. This constitutes a clear violation of Sections 73.3526(a)(9) and 73.3526(e). Furthermore, with respect to the 6 quarters for which issues/programs lists were prepared and maintained, they were not prepared as required (see para. 13, supra.) and failed to reflect the airing of any significant issue-related programming. Instead, most of the "Public Affairs File" forms included in WSMG's public file reflect the broadcast of thirty second Public Service Announcement or 15 to 30 minute promotional segments, within a regular talk show broadcast on the station. Indeed, for the first two quarters of 1993 the only real "issues" the station appears to have addressed in its programming are illiteracy, the need for blood donors and projects of the local NAACP. The balance of WSMG's purported issue-related programming for the first half of 1993 appears to consist of nothing more than promotions for various nonprofit and community events, which while laudable, do not appear on their face to reflect significant issues of concern to the community, nor has WSMG provided the required narrative, identifying the significant issues of concern addressed. Furthermore, as reflected above, the "Public Affairs Forms" appended to Exhibit E, as Attachment No. 1, are representative of all of the other issues/programs lists contained in WSMG's public file.

22. Although formal ascertainment surveys are no longer required, the principles of community service programming stated in the Primer on Ascertainment of Community Problems by Broadcast

Applicants, 27 FCC2d 650 (1971) (the "Primer") is still a primary source of Commission policy on what broadcast efforts are required of licensees to serve public problems, needs and interests. In the Primer, the Commission stated that a licensee who relies solely on PSA's to address community problems would "raises a question as to the adequacy of the proposal," and went on to explain that "society is confronted with many complex problems that can not be met by the brief comment afforded by announcements." Id. at 676. "The broadcaster's stewardship of the frequency includes programs, as a general rule." Id. Yet, WSMG's efforts for the first three quarters of 1993 does not reflect the broadcast of a single "program," designed to address significant issues of concern to the community. The Commission also indicated that a broadcaster may not rely upon other, non-broadcast activities as a substitute for meeting its obligation to address community problems in its programming. Id. at 678. Although recognizing that participation and promotion of civic activities and events is laudable and can serve to provide the broadcaster with insight into community problems, the Commission indicated that its determinations regarding the licensee's public interest programming obligations "must rest upon how the broadcast matter presented meets community problems." Id. Yet, in the case of WSMG, the promotion of non-profit and community events reflected its only documented effort in this regard.

23. Thus, the available evidence of WSMG's broadcasting record is woefully bereft of any serious public affairs

programming effort, reflecting no serious effort to offer any programing designed to address any reasonably ascertained issues of concern to the community. Indeed, evidence of an offering, such as WSMG's, consisting entirely of promotions of local events and PSA's raises a prima facie case of insufficiency. Therefore, SBH submits that it has made a sufficient threshold showing, and that the standard comparative issue herein should be enlarged to permit the adduction of evidence as to Darrell Bryan's unusually poor past broadcast record, as reflected in his operation of WSMG(AM), Tusculum, Tennessee.

SUMMARY

24. The Threshold Showing advanced herein meets the requirements of the Commission's Policy Statement and supports the enlargement of issues to permit consideration under the standard comparative issue of Bryan's unusually poor broadcast record, as evidenced in his operation of WSMG. Furthermore, a prima facie showing has been advanced, sufficient to justify the enlargement of the issues in this proceeding to include the above requested issues. Therefore, the above requested issues should be added and the burdens of proceeding and proof should be placed upon Bryan.

IV. DISCOVERY

25. In the event the issues are enlarged as requested, SBH would request to take the depositions of Darrell Bryan, Kathy

Knight, Frank Harkins, Scott Nichols, Charlie Grant, Preston Powers, unidentified current and former employees of WSMG(AM), who may have knowlege concerning matters relevant to the added issues, and any other person known to or subsequently determined to have been involved in or to have knowledge of any of the facts and circumstances relevant to the requested issues. In addition SBH requests the production of documents responsive to the attached requests. Finally, SBH may desire to propound written interrogatories for determining the identities of persons likely to have relevant knowledge of the matters at issue or to identify the existence of documents.

WHEREFORE, premises considered and good cause having been shown, the issues in this proceeding should be ENLARGED to include the above requested issues.

Respectfully Submitted

SBH PROPERTIES, INC.

By: 

Timothy K. Brady
Its Attorney

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September 30, 1993

EXHIBIT A

DECLARATION

I, William H. Seaver, do hereby certify that:

1. Having received information that WSMG(AM), Greeneville, Tennessee, had been engaging in a continuing practice of leaving its unmodulated and unattended carrier on all night following sign-off, I undertook to monitor the station on several occasions beginning on May 8, 1993.

2. On Saturday, May 8, 1993, I monitored WSMG(AM) beginning prior to sign-off at midnight. The operator gave an incomplete ID at midnight and the station discontinued programming. However, the carrier remained on following sign-off with no modulation. I further observed the studio lights being turned off, except for a small lighted control room. The operator locked the door of the studio at 942 Snap Ferry Road and left the premises at approximately 12:15 a.m. I then drove approximately 2.5 miles to the tower/transmitter site, located at the north end of Kingsley Avenue off the Greeneville bypass. I monitored the station from this point, and it was very clear that the carrier was still on with no modulation. I continued to monitor the carrier at the transmitter site until 2:15 a.m., hearing no IDs or any other modulation, whatsoever, during this period of time.

3. At 6:00 a.m. on Sunday, May 9, 1993, WSMG(AM) was signed on the air without proper ID. The operator was Scott Nichols. Prior to sign-on, I observed an unmodulated carrier, just as I